

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

<hr/> MALIBU TEXTILES, INC.,	:	
	:	Docket No. 07-cv-4780 (SAS)
Plaintiff,	:	
	:	
v.	:	
	:	
CAROL ANDERSON, INC. and	:	
CABI, LLC,	:	
	:	
Defendants.	:	
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DECLARATION OF MATTHEW A. KAPLAN

I, Matthew A. Kaplan, declare as follows:

1. I am an associate of the law firm Cowan, DeBaets, Abrahams & Sheppard LLP, counsel to Plaintiff Malibu Textiles, Inc. ("Malibu") in the above-captioned action. I make this declaration on the basis of my own knowledge, except where otherwise indicated.

2. Attached hereto as Exhibit A are true and correct copies of relevant portions of the Deposition of Joseph Dickenson, an Acknowledgement of Rights executed by Mr. Dickenson, relevant portions of the Deposition of Richard Samuels, and relevant portions of the Deposition of John Irwin.

3. Attached hereto as Exhibit B are true and correct copies of relevant portions of the Deposition of Robert Jabelin and of relevant portions of the Master Agreement between Malibu Textiles, Inc. and Metritek LLLP.

4. Attached hereto as Exhibit C is a true and correct copies of relevant portions of Malibu's supplemental copyright registrations.

5. Attached hereto as Exhibit D are true and correct copies of relevant documents produced by Defendants.

6. Included within Exhibit D are copies of documents produced on Monday, April 14, 2008 for inspection and copying at Defendants' counsel's offices which I personally reviewed.

7. Attached hereto as Exhibit E is a true and correct copies of photocopies of the CABI's garments.

8. I attended and participated in the pre-motion conference before Judge Scheindlin on January 22, 2008. During that conference, counsel for defendants Harlan Lazarus, Esq. conceded that defendants not only had access to Malibu's Copyrighted Lace Designs (as that term is defined in plaintiff's Memorandum of Law) but also that the lace used by CABI in its garments was substantially similar to Malibu's Copyrighted Lace Designs. Mr. Lazarus specifically stated that the only issue to be before the Court was whether Malibu's copyright registrations were valid. To that end, Mr. Lazarus sought, and was granted, the right to depose the knitters from whom Malibu acquired its rights in its Copyrighted Lace Designs prior to Malibu making this motion.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 17th day of April, 2008.


MATTHEW A. KAPLAN